

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 10a0748n.06

No. 09-4351

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED
Dec 01, 2010
LEONARD GREEN, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

V.

EDWARD CALLOWAY,

Defendant-Appellant.

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ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF
OHIO

Before: MARTIN, GIBBONS, and KETHLEDGE, Circuit Judges.

KETHLEDGE, Circuit Judge. In July 2000, Edward Calloway pled guilty to possession of cocaine base with intent to distribute. *See* 21 U.S.C. § 841. The sentencing court determined that Calloway was a career offender under U.S. Sentencing Guideline § 4B1.1. After a three-level reduction for accepting responsibility, the recommended range for Calloway's sentence was 151 to 188 months. The court sentenced Calloway to 151 months' imprisonment.

The Sentencing Commission thereafter retroactively amended the sentencing Guidelines for crack cocaine. Calloway moved under 18 U.S.C. § 3582(c)(2) to reduce his sentence. Section 3582(c)(2) says a defendant may seek a reduction if he was sentenced “based on a sentencing range” retroactively lowered by the Commission. The district court denied his motion, holding that Calloway was ineligible for a reduction because he was sentenced based on the career-offender

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range, which has not been lowered. We review that determination *de novo*. See *United States v. Johnson*, 569 F.3d 619, 623 (6th Cir. 2009).

On appeal, Calloway argues that the sentencing court must have based his sentence in part on the crack-possession range, because the career-offender range is advisory under *United States v. Booker*, 543 U.S. 220 (2005). Calloway also argues that he was not sentenced based on the career-offender range because he received a reduction for accepting responsibility.

Calloway concedes that we rejected these same arguments in *United States v. Perdue*, 572 F.3d 288 (6th Cir. 2009), *cert. denied*, 130 S. Ct. 1537 (2010). We are bound by that decision, and thus reject his arguments.

The district court's order denying Calloway's motion is affirmed.